

1 carriage, as you mentioned earlier, that we
2 had gone first, others had not followed, as
3 perhaps they had thought. And, so, they asked
4 would we put money in to give something called
5 "launch fees", payments that they could then
6 have the cash to try to buy distribution from
7 other cable companies. And, so, I think we
8 ultimately bid 250-300 million dollars of
9 payments that went from -- would go from our
10 entity to the NFL Network, to allow them to
11 pay launch fees for that channel.

12 Q Okay. And just to make sure I
13 followed that, so your bid was to acquire the
14 games for OLN Network, but, in addition, as
15 part of this, the NFL asked you to do certain
16 things to help it get distribution with NFL
17 Network to other operators out there. Is that
18 right?

19 A Yes. I think they were pondering,
20 if they didn't put the games on the NFL
21 Network, what would happen to the NFL Network,
22 and would we support the NFL Network, as we

1 were building OLN, including the equity that
2 they would own in OLN.

3 Q And you offered them two to three
4 hundred million dollars to help them
5 distribute the NFL Network to other operators
6 as part of your bid.

7 A Yes.

8 Q Is it usual for you to have a
9 transaction for carriage where somebody is
10 asking you for money to help them distribute
11 their channel to other people?

12 A No.

13 Q Have you ever seen a request like
14 that before?

15 JUDGE SIPPEL: You're shaking your
16 head. Do you mean no?

17 THE WITNESS: I'm thinking.

18 JUDGE SIPPEL: Oh, I'm sorry.

19 THE WITNESS: I want to be very
20 thoughtful, if I might.

21 JUDGE SIPPEL: Yes, sir. Sorry.

22 Go ahead.

1 THE WITNESS: No, I cannot think
2 of anything.

3 BY MR. CARROLL:

4 Q Okay. So you have the offer you
5 put together, and we know the answer, but do
6 they accept the offer?

7 A No, they do not.

8 Q How do you learn the outcome?

9 A Well, I got -- I had one phone
10 call with Paul Tagliabue a few days before a
11 meeting that the owners had, where he said it
12 may not happen, but the official call was
13 after the owners voted, I gather. I wasn't
14 there. And he called me to say that they were
15 going to give the games to the NFL Network.

16 Q Okay. Let me pause, before I go
17 to the last call. Tell me about the first
18 call. Did you get some kind of preliminary
19 call from Mr. Tagliabue before the final
20 owners meeting, at least as you understood it?

21 A You know, I recall, it wasn't a
22 shock that we weren't getting it by the time

1 it finally happened. It was sort of down to
2 the two of us. He had told me that, and he
3 said I think there's -- the owners -- several
4 owners, or certain owners are leaning towards
5 wanting to own 100 percent of the equity, and
6 wanting to try and do this themselves.

7 Q Okay. And then tell me about the
8 final call, where you hear officially. Who
9 calls whom?

10 A He calls me. It was not a very
11 long call, and he said, I don't remember
12 exactly, but something to the effect, thanks
13 for all the effort, but the owners have
14 decided -- he phrased it that way, "the
15 owners", had decided to put the games on the
16 NFL Network.

17 Q Does he give you any reasons, do
18 you remember?

19 A I don't think so.

20 Q Okay. What do you say to him?

21 A Well, I said I was -- appreciated
22 the efforts, that we were, obviously,

1 disappointed, and thought that they were
2 probably making a mistake. I think we had
3 made a pretty high bid. And that's what I
4 recall saying. And he said well, you may be
5 right, and sometimes the owners have to learn
6 the hard way.

7 Q And you remember that.

8 A Vividly. That's how the call
9 ended.

10 Q That's how the call ended.

11 A Very cordial, and he had always
12 been very statesmanlike, and artful, and not
13 saying it was his recommendation to go one way
14 or the other. He was always very deferential
15 to the owners, and it was a rare glimpse that
16 well, maybe you're right. This will be hard.

17 Q Was there any time in the
18 conversation when you raised your voice at
19 him?

20 A Absolutely not.

21 Q Did he raise his voice at you at
22 any time?

1 A Absolutely not.

2 Q Any cursing or swearing in the
3 call?

4 A That's not my style. That's not
5 his style, I suppose.

6 Q Did you make any threats to him?

7 A No.

8 Q Was there any time when in the
9 call there was any discussion between the two
10 of you about his relations with cable
11 operators, with cable companies, generally?

12 A Well, previously, we had a lot of
13 discussions about the NFL, not to personalize
14 it to him, the NFL's relationship with the
15 cable industry, really over the Sunday Ticket,
16 decision by the NFL to be exclusive to a
17 competitor platform. And, the difficulties
18 they had in, as we were discussing, and their
19 desire for us to help them, if we were to do -
20 - that we had a channel, OLN, that had every
21 cable company, and every satellite company
22 subscribing to this channel. And that we

1 could, in addition to the 250 or 300 million
2 dollars, we had a channel that had a pre-
3 existing relationship with all those cable
4 companies, and that that could be helpful.

5 Q Did that come up again in his last
6 call in any way, that since you weren't going
7 to be signing up a deal, he'd be left with the
8 same situation? Was there anything like that?

9 A I think he thought it was going to
10 be -- or I said I think it was going to be
11 hard. Previously, we had been discussing that
12 it was a change for the NFL to just license
13 games. He and I had this discussion several
14 times, that to go from just a licensor of
15 games to other networks, whether it be they
16 broadcast, or cable, or Sunday Ticket, to
17 putting them on. So, for instance, you go to
18 an advertiser, Poland Springs, and Poland
19 Springs says they only have so many dollars to
20 spend. I can spend them on Channel One,
21 Broadcast Channel Two, or the NFL Network.
22 He's now competing with the people he's

1 distributing to, to get those advertising
2 dollars to his network, or to the
3 distributors. Carry my channel, can't worry
4 about the other channel. But it's a change.
5 It creates conflicts, and a new business for
6 them. Is that really something that they had
7 thought all through. So, I think he -- it
8 came up that it's going to be hard, that they
9 had hard times trying to directly start a
10 channel, and that now they're going to have to
11 raise the prices for a channel that isn't yet
12 really broadly distributed. That's going to
13 be hard.

14 JUDGE SIPPEL: "He", being?

15 THE WITNESS: Mr. Tagliabue.

16 JUDGE SIPPEL: Thank you.

17 BY MR. CARROLL:

18 Q Now, one of the things you'd
19 offered in the deal to him, that he didn't
20 accept, was to help him get distribution with
21 the other cable companies, including giving
22 him two or three hundred million dollars to do

1 that. Right?

2 A Right.

3 Q And I just want to be clear on
4 something. Since he turned your deal down,
5 were you going to be helping him?

6 A I wasn't going to be hurting him,
7 but I wasn't going to be offering that kind of
8 money, no.

9 Q He wasn't going to get two to
10 three hundred million dollars of support from
11 you, since he turned the deal down. Right?

12 A Right.

13 Q He was going to have to fend for
14 himself with the rest of the cable industry.

15 A Yes.

16 Q Now, you were carrying his NFL
17 Network at the time. Right?

18 A Right.

19 Q And did you continue to carry it
20 after this phone call?

21 A Of course.

22 Q Did there come a time when you

1 moved the NFL Network to a sports tier?

2 A Yes.

3 Q And was that right after this
4 phone call, or did some time pass?

5 A I think most of our systems more
6 than a year passed.

7 Q Okay. And what -- can you explain
8 to us just in summary form, because we've
9 heard some of this from others already, what
10 was the thinking behind moving the NFL Network
11 to a sports tier, when you finally did?

12 A Well, we had a contract that said
13 that if we never got Sunday Ticket, or we
14 never got any of the games directly licensed,
15 we had the right to move the games to a sports
16 tier. The implication of that is, you still
17 offer the channel to your customers, but you
18 reduce the payment by more than \$50 million a
19 year, which is very attractive to the
20 corporation as a public company. That was
21 sort of a easy decision, because it was able
22 to have the product available, but make \$50

1 million a year -- pay \$50 million a year less
2 for the content.

3 Q When the decision was made, and do
4 you know whether that decision was later in
5 '06, or in '07? Do you have a memory of the
6 time period?

7 A I think it was later, much later.
8 It was a right we had. I always expected that
9 the NFL would want to not see that happen, so
10 there's no firm decision. It was something we
11 could be discussing, the right you had,
12 whether you actually -- we didn't know what
13 the price for the games would be. The \$50
14 million I'm referring to was after they priced
15 the so-called surcharge for the games. They
16 could have had a very different price, and
17 that might have had a different outcome.

18 Q Did the tiering, this issue of
19 tiering come up in that last conversation when
20 Mr. Tagliabue called you to tell you you
21 weren't going to get the games? Did it come
22 then at all?

1 A No.

2 Q Had your tiering rights under the
3 contract come up in earlier discussions at
4 all?

5 A Yes. First of all, it came up
6 when we signed the contract, and they were the
7 subject of great discussion, many rounds of
8 negotiation, and it was very understood by the
9 people involved. But, as we got to the final
10 round of the bidding for the eight-game
11 package, we thought that it was possible that
12 the owners, and maybe the senior NFL
13 management either had forgotten, or had not
14 really been briefed by Mr. Bornstein, who was
15 the other bidder, as to this possibility.

16 Q The possibility?

17 A That we had a tiering right. So,
18 in several of the meetings before they made a
19 decision, we talked about the fact that we had
20 this right, and we wanted to make sure they
21 were evaluating how many customers were on one
22 network versus another network, that they had

1 all the facts, and they had thought all the
2 possibilities through. And that they knew of
3 this fact.

4 Q And, in those discussions with NFL
5 representatives about your tiering right, did
6 anybody from the NFL protest in any way?

7 A Absolutely not.

8 Q Did anyone say you don't have this
9 right?

10 A No.

11 Q Did anyone push back and say how
12 dare you think about this right, anything like
13 that?

14 A No.

15 Q No negative reaction at all from
16 the NFL.

17 A That's right.

18 Q Now, when you tiered later,
19 though, later in '06 or '07, whenever it was,
20 were you expecting to get a positive reaction
21 from the NFL, a negative reaction? What were
22 you thinking would happen when you actually

1 did it?

2 A Well, you probably have to pick
3 which period of time, if you don't mind, in
4 that process. As I said, somewhere before the
5 season, let's say, started, when those games
6 when on the air, I thought the NFL would say
7 don't do this. Here's reason why not to,
8 here's something.

9 JUDGE SIPPEL: Can you give us a
10 year? We're talking about the fall of what,
11 2007?

12 MR. PHILLIPS: I think 2006.

13 JUDGE SIPPEL: Oh, 2006.

14 MR. PHILLIPS: Yes.

15 THE WITNESS: That's correct. And
16 what complicated it a little bit, and perhaps
17 accelerated it, was that we had just bought
18 some systems from bankrupt Adelphia, and we
19 had swapped some other systems with Time
20 Warner. And the systems that we received, we
21 wanted to launch the NFL Network on a sports
22 tier, because the season was just starting.

1 We didn't want to move it 30 days, or 60 days
2 later, so we needed to get the right to launch
3 it. And I think that's what precipitated them
4 saying we're not going to let you launch it on
5 a sports tier. At the same time, we were
6 going to notify them that for the systems that
7 had it on a digital tier, we were moving it to
8 a sports tier, so it was a little -- it wasn't
9 all exactly the same thing. But all around
10 that time period, we were in the preparations
11 to tier the product.

12 Q And let me just focus on that,
13 because I'm not sure that's been explained
14 previously this week. When you made the
15 decision to tier, did you do it all at once
16 across the entire systems, or did you do it in
17 kind of stages?

18 A You know, in terms of customer
19 impact, it was done in terms of stages. The
20 first stage were these newly acquired systems,
21 I recall, I think, that needed to launch the
22 channel. It wasn't on the air at all, and we

1 wanted to launch it as a sports tier sometime
2 September, October, November, in that period
3 of time in 2006.

4 Q So those were new channels that
5 didn't have the NFL Network at all.

6 A Like Time Warner, for instance. I
7 think these were Time Warner systems that did
8 not have any NFL Network carriage at all.

9 Q So, you acquired the systems from
10 Time Warner, and they hadn't been carrying the
11 NFL Network at all.

12 A Correct.

13 Q And you were going to put the NFL
14 Network on there.

15 A We wanted to launch it as a sports
16 tier.

17 Q As a sports tier. And then what
18 about all of your other existing Comcast
19 systems that had already been receiving NFL
20 Network, did you tier them all at once, or was
21 that staged at a later point?

22 A It happened all at once at a later

1 point.

2 MR. CARROLL: That's what you get
3 for a bad question, isn't it?

4 JUDGE SIPPEL: Sometimes you win,
5 sometimes you lost on those things.

6 MR. CARROLL: You can tell, it's
7 not rehearsed when that happens.

8 BY MR. CARROLL:

9 Q How much later was it with respect
10 to the other systems?

11 A Well, it was going to be I think
12 at the end of the year, end of '06, but we
13 were sued by the NFL over this matter. And I
14 think it did not happen until later in '07.

15 Q Okay. But the plan that you had
16 decided on was that you would tier your
17 existing systems at the end of '06 after the
18 first football season.

19 A Yes.

20 Q So that they actually would have
21 continued to run not on a sports tier, to run
22 on D2 during the first football season.

1 A Correct.

2 Q And that, in fact, happened. Is
3 that right?

4 A Correct.

5 Q Okay. Now, you mentioned you got
6 sued by the NFL, and you're not referring to
7 this suit, I don't think. You're referring to
8 the suit up in New York. Is that right?

9 A Yes.

10 Q Before that happened, before
11 things got that far, did you make any effort
12 to reach out to anybody at the NFL and work
13 things out in any way?

14 A I did. I called the new
15 Commissioner, Roger Goodell. I previously
16 called him to congratulate him when he became
17 Commissioner sometime earlier. But right --
18 say October, sometime in there, in the fall,
19 before they had sued us, at least to my
20 knowledge before they had sued us, I called
21 him to say why weren't they going to turn on
22 these Time Warner systems that we had

1 acquired, and what was the problem, because we
2 had this sports tier right. Didn't understand
3 why they would be objecting to that.

4 Q Now, where was Mr. Tagliabue by
5 this point? Was he no longer the
6 Commissioner?

7 A Right. Sometime after -- between
8 January and October, I don't remember when,
9 Roger Goodell took over as Commissioner of the
10 NFL.

11 Q So, you called the new
12 Commissioner.

13 A A couple of times.

14 Q Okay. And on the occasion when
15 you called him to talk about this tiering, do
16 you remember -- can you tell us what you
17 remember about the conversation?

18 A I tried -- again, I don't think he
19 was familiar with cable channels, or sort of
20 the economics of these different levels of
21 carriage, and what the implications were to a
22 public company like Comcast. And I said to

1 him, we save \$50 million a year but putting it
2 on a sports tier, kind of -- I think that's
3 the right thing for us to do. And I wanted to
4 try to understand why he wouldn't see that
5 that way, and so we talked about that, and I
6 explained that to him.

7 Q What did he say?

8 A I sort of said is there some --
9 what you want to talk about or something, he
10 said -- I don't recall him saying much.
11 Saying well, we -- in fact, I don't recall
12 what he said, specifically, back. I'm not
13 sure that -- he just sort of said well, thanks
14 for the call, or something.

15 Q Did he make any mention that his
16 lawyers were preparing to sue you in this
17 phone call?

18 A No.

19 Q You certainly didn't threaten him
20 in the phone call.

21 A No, sir.

22 Q Did you find out after the phone

1 call that he'd already sued you when you were
2 speaking to him?

3 A Like a day later.

4 JUDGE SIPPEL: That was Mr.
5 Goodell now we're talking about.

6 THE WITNESS: Yes.

7 MR. CARROLL: Yes.

8 THE WITNESS: And I -- we got
9 notification that we had been sued through,
10 you guys would know better than I, a letter,
11 or some sort of filing without any head's up
12 that we had been sued.

13 BY MR. CARROLL:

14 Q Were you thinking, when you made
15 the decision to tier, even before the NFL
16 sued, that that kind of thing might happen,
17 though?

18 A Well, yes. The NFL had publicly
19 announced that Time Warner and Cablevision
20 systems, which were two operators in New York
21 City who did not carry the NFL Network at all,
22 that they were going to spend something like

1 \$100 million in a marketing campaign that was
2 anti-cable, and anti-Time Warner, anti-
3 Cablevision for their non-carriage of the NFL.
4 And Time Warner, in that same Adelphia
5 bankruptcy situation, had inherited cable
6 systems from Adelphia that carried the NFL
7 Network, and they dropped the NFL Network.
8 And NFL had gone to the FCC and brought an
9 action against Time Warner at the FCC for
10 dropping those systems. So between those two
11 actions that had already taken place, it was
12 pretty clear that the -- and I think their
13 words, NFL was gearing up for a big fight over
14 carriage of the NFL Network with Time Warner
15 and Cablevision, so we could presume that we
16 were next.

17 Q Based on what the NFL had done
18 with starting an action in front of the FCC
19 with respect to Time Warner and Adelphia
20 systems, when you made the decision to tier,
21 were you thinking there is a possibility that
22 the NFL might do the same to you, they might

1 initiate an FCC action?

2 A Yes. First of all, they had just
3 had an FCC action against Time Warner, and it
4 was no secret that the then Chairman of the
5 FCC was not fond of cable, shall we say, and
6 it was -- you could see the connections of the
7 steps, yes.

8 Q So why did you still do it? Why
9 not just back up and say it's not worth it.
10 I don't want to get sued. I'll distribute the
11 darned thing.

12 A I don't want to understate what
13 \$50 million a year means for a public company,
14 but you -- the channel we believed was just
15 too expensive, and other operators didn't even
16 have the opportunity to offer it to their
17 customers in a sports tier, and they didn't
18 carry it at all. So, we had the opportunity
19 to still have it be available, and save \$50
20 million. Other operators made their own
21 decision that for six weeks of content, and
22 eight games that were going to be made

1 available in the home and the away market on
2 broadcast television anyway, and that all the
3 Sunday Ticket customers already had those
4 games, that it was just too expensive.

5 MR. CARROLL: Your Honor, may I
6 identify one document as an exhibit, and
7 approach?

8 JUDGE SIPPEL: Well, let's give a
9 copy to

10 MR. TULLY:

11 MR. CARROLL: Oh, no, sure.

12 JUDGE SIPPEL: Yes, sure.

13 MR. CARROLL: Okay. This is
14 Comcast Exhibit 721. This is a document
15 produced by the NFL in this case.

16 JUDGE SIPPEL: Comcast 721?

17 MR. CARROLL: Yes.

18 MR. CARROLL: And, Your Honor, I
19 want to offer this into evidence. I'm not
20 going to ask the witness about it, but I
21 thought Your Honor would want to see it. This
22 is a document produced by the NFL in this case

1 that purports to be their notes from the
2 conversation between my client, Mr. Roberts,
3 and Mr. Goodell that he's just related. And
4 since it's their document, I'd move it into
5 evidence, but I'm not going to ask my client
6 questions about it. I've already asked him
7 about the conversation. But I think for a
8 complete record, it would valuable to have in
9 the record.

10 JUDGE SIPPEL: Any objection?

11 MR. PHILLIPS: No, Your Honor.

12 JUDGE SIPPEL: All right. It's
13 identified as Comcast 721, and it is received
14 in evidence as Comcast 721.

15 (WHEREUPON, THE DOCUMENT REFERRED
16 TO WAS MARKED AS COMCAST EXHIBIT
17 721 FOR IDENTIFICATION, AND
18 RECEIVED IN EVIDENCE.)

19 MR. CARROLL: Thank you, Your
20 Honor.

21 BY MR. CARROLL:

22 Q So, one last subject. And this is

1 what everybody really wants to know, but I
2 don't want you to reveal anything that can't
3 be revealed. Your contract expires in -- I've
4 lost track of days, Your Honor. I don't even
5 know what day it is today. The 17th.

6 JUDGE SIPPEL: Today is the 17th.

7 BY MR. CARROLL:

8 Q So your contract expires in 13
9 days?

10 A Right.

11 Q And is there any deal in place
12 with the NFL to extend it so that the NFL
13 Network can stay on the air? Is there any
14 deal in place currently?

15 A No.

16 Q I have no questions about the
17 substance of anything. I just want to
18 indicate one thing. Have there been efforts
19 to have discussions that the two sides have
20 had over the recent weeks?

21 A Yes.

22 Q But there's no deal in place. Are